

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	DIVISION OF WATER
)	POLLUTION CONTROL
EARL WAYNE PRICE)	
)	CASE NO. WPC07-0152
RESPONDENT)	

ORDER OF REVOCATION

NOW COMES James H. Fyke, Commissioner of the Tennessee Department of Environment and Conservation, and states:

PARTIES

I.

James H. Fyke is the duly appointed Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "Department").

II.

Mr. Earl Wayne Price (hereinafter the "Respondent") is a certified operator within the meaning of Tennessee Code Annotated (T.C.A.) §§68-221-901 et seq., the Water Environmental Health Act (hereinafter the "WEH Act"). The Respondent holds a Grade III Wastewater Treatment Plant Operator license and a Grade I Wastewater Collection System Operator license, with the identification number, 409139993. The Respondent

was the operator of record for the Town of Decatur Sewage Treatment Plant (STP), operating under the National Pollutant Discharge Elimination System (NPDES) permit number TN0058521 (hereinafter the "permit") in Meigs County, Tennessee. Service of process may be made on the Respondent at 173 Briarwood Circle, Summerville, Georgia 30747.

JURISDICTION

III.

Whenever the Commissioner has reason to believe that a violation of T.C.A. §69-3-101 *et seq.*, the *Water Quality Control Act*, (hereinafter the "Act") has occurred, or is about to occur, the Commissioner may issue a complaint to the violator and may order corrective action be taken, pursuant to T.C.A. §69-3-109(a) of the Act. The Commissioner, in accordance with the rules and regulations of the board, may revoke the certificate of an operator when it is found that the operator has practiced fraud or deception pursuant to T.C.A. §68-221-911(a) of the WEH Act and the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapter 1200-5-3-.11. Further, the Commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated, pursuant to T.C.A. §69-3-105, and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (hereinafter the "Rule").

IV.

The Respondent is a "person" as defined at T.C.A. §69-3-103(20) and as herein described, has violated the Act.

FACTS

V.

On March 6, 2006, the Respondent did knowingly make and cause to be made a material false statement, representation, and certification in a record and document, the February 2006 NPDES Discharge Monitoring Report (DMR) for the Decatur, TN Sewage Treatment Plant, filed and required to be maintained under the Act.

VI.

On March 19, 2007, in the United States District Court Eastern District of Tennessee, the Respondent, pled guilty to one count of making false statements in required documents under the federal Clean Water Act, in violation 33 U.S.C. §1319(c)(4) and 18 U.S.C. §2(a) and (b). Said guilty plea resulted in a felony conviction.

VIOLATIONS

VII.

By reporting data, which was known to be false, the Respondent is in violation of T.C.A. §68-221-911 and Rule 1200-5-3-.11, which states:

T.C.A. §68-221-911(a):

The Commissioner, in accordance with the rules and regulations of the board, may revoke the certificate of an operator when it is found that the operator has practiced fraud or deception; that reasonable care, judgment or the application of such operator's knowledge was not used in performance of such operator's duties; or that the operator is incompetent to properly perform such operator's duties.

Rule 1200-5-3-.11:

- (1) The Commissioner may issue an order to revoke the certificate of an operator when he/she determines the operator has not used reasonable care, judgment, or the application of his/her knowledge in the performance of his/her duties as a certified operator, or when the Commissioner determines that the operator is incompetent to perform those duties properly.
- (2) An operator shall be deemed to have not used reasonable care, judgment, or the application of his/her knowledge in the performance of his/her duties if he/she does not comply with the laws, rules, permit requirements, or orders of any governmental agency or court which govern the water supply system or the wastewater system he/she operates. Such acts of noncompliance include but are not limited to the following:
 - (a) The intentional or the negligent failure by the operator or persons under his/her supervision to act that results in a water supply system facility or a wastewater system facility not operating in the manner in which it is capable of being operated for the performance of its designed function.
 - (b) The intentional or the negligent failure by the operator or persons under his/her supervision to comply with the monitoring, sampling, analysis, or reporting requirements for a water supply system facility or a wastewater system facility.
 - (c) The intentional or the negligent unlawful discharge of wastes from a water supply system facility or a wastewater system facility.
 - (d) The intentional or the negligent failure by the operator or persons under his/her supervision to notify the Department of conditions: which may affect the quantity or quality of water being supplied to the customers of a water supply system; which cause the pollution of the waters of the State of Tennessee; or, which are violative of a standard of water quality promulgated by any governmental agency.
- (3) An operator shall be deemed to be incompetent to perform his/her duties properly when he/she does not possess the basic skills and knowledge necessary to operate a water supply system facility or a wastewater system facility including laboratory functions or if

he/she fails to have a system of verification and oversight of employees under his/her charge. Incompetency shall be determined by examining the technical skills of the operator in operating the type of facility of which he/she is in direct charge.

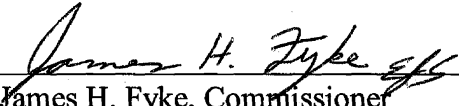
- (5) The Commissioner may issue an order to revoke the certificate of an operator when he/she determines that the operator has practiced fraud or deception during the performance of his/her duties as a certified operator.
- (6) The Commissioner may issue an order to revoke the certificate of an operator who performs laboratory analytical services for a water supply or a wastewater system when he/she determines that the operator has prepared and/or signed reports of laboratory analysis results for the system that:
 - (a) contain inaccurate data and are known or should be known by the operator to be false; or
 - (b) contain inaccurate data because the operator has not used reasonable care, judgment, or the application of his/her knowledge either in the performance of the laboratory analysis or in the preparation of the laboratory analytical reports.

ORDER

VIII.

WHEREFORE, pursuant to the authority vested by T.C.A. §§68-221-911, I, James H. Fyke, hereby revoke the Respondent's Grade III Wastewater Treatment Plant Operator license and Grade I Wastewater Collection System Operator license, which is # 409139993.

Issued by the Commissioner of the Tennessee Department of Environment and Conservation on this 16th day of July, 2007.


James H. Fyke, Commissioner
Department of Environment and Conservation

NOTICE OF RIGHTS

Tennessee Code Annotated §§68-221-906(11) and 68-221-911 allow the Respondent to secure review of this Order. In order to secure review of this Order, the Respondent must file with the director at the address below a written petition setting forth each Respondent's contentions and requesting a hearing before the Water and Wastewater Operator Certification Board. The Respondent must file the written petition within THIRTY (30) DAYS of receiving this Order and Assessment.

If the required written petition is not filed within THIRTY (30) DAYS of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§. 68-221-906(11) and 68-221-911.

Any hearing of this case before the Water and Wastewater Operator Certification Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. §4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on his behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low- income individuals may be eligible

for representation at no cost or reduced cost through a local bar association or legal aid organization.

Any petition to appeal which is filed, or other correspondence should be sent to Sam Wallace, Assistant General Counsel, 20th Floor, L&C Tower, 401 Church Street, Nashville, TN 37243-1548. The case number should be written on all correspondence regarding this matter.

A handwritten signature in black ink, appearing to read "S. Wallace", is positioned above a horizontal line.

Sam Wallace
Assistant General Counsel
Tennessee Department of
Environment & Conservation
401 Church Street, L&C Tower 20th Floor
Nashville, Tennessee 37243-1548